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NOOR FAREKH MOHAMED KASSIM v. BANK KERJASAMA RAKYAT MALAYSIA BHD

HIGH COURT MALAYA, KUALA LUMPUR
YUSRIN FAIDZ YUSOFF JC
[CIVIL APPEAL NO: WA-11BM-1-09-2024]
B 23 SEPTEMBER 2025

Abstract – *A banker-customer relationship is contractual in nature, governed by the four corners of the agreement, and does not impose any fiduciary or heightened duty of care beyond its express terms. In this case of alleged fraudulent credit card transactions, when the true and proximate source of the problem stemmed directly and exclusively from the customer's own poor judgment and decision to grant access to third parties, in clear violation of the customer's contractual obligations to maintain the security and exclusivity of her banking credentials, it is not any failure or negligence on the part of the bank. The bank is under no obligation in law to second-guess the transactions. The customer's conscious decision to cede control of her banking credentials absolves the bank of liability.*

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BANKING: *Facilities – Credit card agreement – Dispute on credit card transactions – Allegation of unauthorised and fraudulent transactions made – Investigation conducted by bank – Whether transactions initiated by someone known to plaintiff – Whether bank absolved of liability – Bank commenced legal proceedings to recover outstanding balance – Whether there was breach of contract and negligence on bank's part in failing to prevent disputed transactions – Whether certificate of indebtedness and account statements constituted conclusive evidence of debt – Whether bank complied with Bank Negara Malaysia's regulatory policies and guidelines*

CONTRACT: *Agreement – Credit card agreement – Dispute on credit card transactions – Allegation of unauthorised and fraudulent transactions made – Investigation conducted by bank – Whether transactions initiated by someone known to plaintiff – Whether bank absolved of liability – Bank commenced legal proceedings to recover outstanding balance – Whether there was breach of contract and negligence on bank's part in failing to prevent disputed transactions – Whether certificate of indebtedness and account statements constituted conclusive evidence of debt – Whether bank complied with Bank Negara Malaysia's regulatory policies and guidelines*

CIVIL PROCEDURE: *Preliminary objection – Competency of appeal – Whether appeal, though modest in quantum, involved questions of law warranting appellate scrutiny – Whether issues framed in legal principle or mere evidential disagreement – Whether appeal fell within statutory exception – Whether preliminary objection dismissed – Courts of Judicature Act 1964, s. 28(1)*

The appellant ('defendant') was issued a Bank Rakyat Credit Card-I facility with a credit limit of RM10,000 subject to the terms and conditions of the credit card-i agreement. She also maintained a debit card with the respondent ('plaintiff'), a co-operative bank. The defendant registered the mobile number belonging to her friend and adopted sister ('SP3') for both her credit card and debit card facilities, thereby granting SP3 full authority to use the cards. Subsequently, three online transactions amounting to RM4,500 were made through the defendant's debit card for purchases on TikTok Hong Kong and TNG Digital Sdn Bhd. The defendant reported these transactions, alleging them to be unauthorised. Thereafter, five further online transactions totalling RM7,000 were processed through the defendant's credit card, also for purchases on TikTok Hong Kong and TNG Digital Sdn Bhd. The defendant contacted the plaintiff's service centre to dispute these credit card transactions. The plaintiff immediately implemented a temporary block and cancelled the card. The plaintiff's Fraud, Security and Compliance Department conducted an investigation and informed the defendant that there was no evidence of unauthorised or fraudulent transactions. Based on the plaintiff's investigation report, these transactions were initiated by SP4, the son of SP3, and the relevant Touch 'n Go account was registered in SP4's name. The plaintiff commenced legal proceedings to recover the outstanding balance which stood at RM8,060.03. The defendant filed a counterclaim, alleging breach of contract and negligence in failing to prevent the eight disputed transactions totalling RM11,500. She asserted that she had not received any SMS notifications or one-time passwords ('OTPs') for those transactions and sought general as well as exemplary damages. The Magistrate entered judgment in favour of the plaintiff. Hence, the defendant appealed. The defendant raised multiple grounds of appeal, which were (i) whether the disputed transactions were fraudulent or unauthorised; (ii) whether the plaintiff breached its duty of care and/or specific terms of the credit card-i agreement; (iii) whether the certificate of indebtedness and account statements constituted conclusive evidence of the debt; (iv) whether the plaintiff complied with Bank Negara Malaysia's regulatory policies and guidelines; (v) whether the Magistrate erred in procedural matters, including pleading issues and cross-examination rights; and (v) whether the Magistrate properly exercised discretion in managing trial proceedings and witness attendance. The plaintiff, however, raised a preliminary objection to the competency of this appeal, relying on s. 28(1) of the Courts of Judicature Act 1964 ('CJA') as the sum in dispute fell below the statutory threshold of RM10,000 and that the appeal was accordingly barred, there being no question of law for determination.

Held (dismissing appeal):

(1) Section 28(1) of the CJA draws a distinction between appeals which are limited to factual disputes in claims under RM10,000 and appeals which, though modest in quantum, involve questions of law that warrant appellate scrutiny. The issues identified by the defendant, whether ultimately meritorious or otherwise, are framed in terms of legal principle and not mere evidential disagreement. The appeal therefore fell within the statutory exception. To adopt the plaintiff's construction would be to elevate form over substance and to preclude appellate consideration of legal error simply because the monetary value is small, a result not consonant with the object and purpose of the provision. The appeal was competent, notwithstanding the modest quantum involved, and the preliminary objection under s. 28(1) was dismissed. (paras 14 & 15)

(2a) The defendant failed entirely to discharge the legal burden of proving, on a balance of probabilities, that the disputed transactions were either fraudulent or unauthorised. The evidence presented at trial was not merely suggestive but was conclusive in demonstrating that the defendant had taken a series of deliberate and conscious steps that led directly to the impugned transactions. By her own admission and action in expressly authorising SP3 to use the cards, and formally registering SP3's mobile number for the purpose of transaction verification, the defendant effectively ceded control and created the very mechanism that facilitated the payments. This was in clear breach of cl. 2(iv) of the credit card agreement, which expressly prohibited allowing third parties to use the card, and cl. 11(i) and (ii) which placed the onus for internet transaction security squarely on the cardholder. (paras 35 & 36)

(2b) The plaintiff's evidence irrefutably showed that the OTPs for every single disputed transaction were successfully delivered to the number belonging to SP3, the very individual the defendant had empowered. The comprehensive internal investigation conducted by the defendant involved analysing transaction logs, SMS delivery reports, and system records, constituted a reasonable and professional inquiry that yielded a definitive conclusion: there was no evidence of fraud or unauthorised activity on the part of the bank's systems or processes. The defendant's allegations of hacking into SP4's TikTok and Touch 'n Go accounts were speculative at best and amounted to a distraction rather than a genuine defence. Such events were entirely irrelevant and legally remote to establish liability on the plaintiff's part, as the scam's purported point of entry was the social media and e-wallet accounts

of a third party (SP4), not the defendant's bank account or credit card facilities. The chain of causation was decisively broken by the defendant's own intervening act of granting access. Ultimately, the true and proximate source of the problem was not any failure or negligence of the plaintiff but stemmed directly and exclusively from the defendant's own poor judgment and decision to grant access to third parties, in clear violation of her contractual obligations to maintain the security and exclusivity of her banking credentials. (paras 37-41)

(3) By registering SP3's mobile number for authentication and thereby granting her effective control of the facility, the defendant assumed the risks of that delegation. This was compounded by her breach of cl. 11(i) and (ii) which placed the responsibility for safeguarding internet transactions squarely on the cardholder. Her decision to allow SP3, and by extension, SP4, to access her details amounted to a direct violation of these core obligations. The disputed transactions were duly authenticated by OTPs sent to the said registered number. The plaintiff had no reason to question their validity, as the transactions bore every outward appearance of regularity. In such circumstances, the *Quincecare* duty was not engaged. The defendant could not rely on *Quincecare* when she herself had created the mandate that enabled the disputed transactions by registering SP3's number and thereby allowing SP4 to access the facility. The plaintiff was under no obligation in law to second guess the transactions. The proximate cause of the loss was the defendant's conscious decision to cede control of her banking credentials, which absolved the plaintiff of liability for the consequences that followed. (paras 43-49)

(4) Clause 15(ii)(a) of the credit card-i agreement stipulated in clear and unambiguous terms that the amounts detailed in the monthly statements issued by the plaintiff shall, in the absence of any manifest error, be deemed conclusive and final proof of the debt owed by the cardholder. The defendant's challenge to this certified amount was fundamentally hollow. She failed to produce any alternative calculations, independent forensic accounting evidence or any material whatsoever to demonstrate that the sum of RM8,060.03 was incorrectly derived. The defendant's failure to identify and prove any such manifest error was fatal to her case. Consequently, the certificate of indebtedness and the detailed monthly statements stood unchallenged and therefore constituted irrefutable and conclusive evidence of the defendant's liability for the outstanding debt. The Magistrate was therefore entirely correct in law to treat them as such and to enter judgment for the certified sum. (paras 51-56)

(5) The plaintiff's conduct was in full alignment with the prescribed standards set by the central bank. The plaintiff demonstrably adhered to the core principles and specific procedural mandates set out in the relevant Bank Negara guidelines throughout its handling of the defendant's complaint. The plaintiff's overall course of action, *ie*, from the initial reporting mechanism to the final decision was consistent not only with the letter of the guidelines but also with their overarching spirit, which aimed to ensure a fair and structured process for complaint resolution. The defendant's attempt to impugn this process amounted to a disagreement with the outcome rather than an identification of any substantive procedural failing. The guidelines provide a framework for investigation; they do not guarantee a result favourable to the cardholder, especially where, as here, the investigation yielded no evidence to support the customer's claim and instead revealed a clear breach of the customer's own contractual obligations. Therefore, the plaintiff's operations remained at all times within the bounds of its contractual and regulatory duties, and its ultimate decision to hold the defendant liable was a direct consequence of the evidence gathered, not a deviation from established protocol. (paras 57-61)

(6) There was no infirmity in the Magistrate's conduct of the proceedings. The defendant's rights were in no way compromised. The Magistrate correctly exercised her discretion in allowing reference to the specific contractual terms and the internal investigation report, as these documents were directly relevant to the central facts in issue; namely, the defendant's obligations under the agreement and the plaintiff's basis for rejecting her claim. The plaintiff's pleadings had adequately set out the material facts regarding the defendant's voluntary registration of a third-party's phone number, the subsequent transactions and the plaintiff's investigation This provided sufficient notice to the defendant of the case she had to meet, fulfilling the fundamental objective of pleadings to prevent surprise and ensure a fair trial on the substantive merits. (paras 62 & 63)

(7) The defendant's right to a fair hearing was not violated by the absence of the Celcom witness. The defendant was granted ample opportunity and had even obtained a court order for discovery, yet failed to procure the witness's attendance due to her own lack of diligence and last-minute requests for adjournments. The Magistrate's balancing of the right to present evidence against the need for timely justice was neither arbitrary nor unfair. Therefore, the proceedings were conducted in accordance with the principles of natural justice, and the

defendant was afforded every reasonable opportunity to present her defence. Thus, it could not be said that the Magistrate's decision was plainly wrong within the meaning of *Lee Ing Chin & Ors v. Gan Yook Chin & Anor.* (paras 64-66)

Case(s) referred to:

Alliance Bank Malaysia Bhd v. Khee San Food Industries Sdn Bhd & Anor [2021] 8 CLJ 225 HC ***(refd)***
Barclays Bank Plc v. Quincecare Ltd [1992] 4 All ER 363 ***(refd)***
Cempaka Finance Bhd v. Ho Lai Ying & Anor [2006] 3 CLJ 544 FC ***(refd)***
Citibank NA v. Ooi Boon Leong & Ors [1980] CLJU 168; [1980] 1 LNS 168 FC ***(refd)***
Hsu Ann Mei Amy v. Oversea-Chinese Banking Corp Ltd [2011] 2 SLR 178 ***(refd)***
Lee Cheong Chee v. HSBC Bank Malaysia Bhd [2021] CLJU 439; [2021] 1 LNS 439 HC ***(refd)***
Lee Ing Chin & Ors v. Gan Yook Chin & Anor [2003] 2 CLJ 19 CA ***(refd)***
Nor Azlina Abdul Aziz v. Expert Project Management Sdn Bhd [2017] 5 CLJ 58 CA ***(refd)***
Philipp v. Barclays Bank UK Plc [2023] UKSC 25 ***(refd)***

Legislation referred to:

Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978, s. 3
Co-operative Societies Act 1993, ss. 7, 8, 9
Courts of Judicature Act 1964, ss. 28(1), 68(1)(a)
Development Financial Institutions Act 2002, s. 3, First Schedule
Rules of Court 2012, O. 18 r. 7, O. 38 r. 14, O. 55 rr. 2, 3, 4

For the appellant/defendant - Wan Sharifah Wan Yusoff, Shaharool Nizam Mohd Kassim & Atiqah Azhar; M/s Shaharool Nizam & Co
For the respondent/plaintiff - Arissa Azreen Ismawi & Nur Athirah Ahmad; M/s Zulpadli & Edham

[Editor's note: Appeal from Magistrate's Court; Suit No: WA-A72M-8974-06-2023.]

Reported by Suhainah Wahiduddin

JUDGMENT

Yusrin Faidz Yusoff JC:

Introduction

[1] In much ado about nothing, Shakespeare spun a drama out of trifles, showing how the smallest of quarrels can consume great energy. This appeal has a similar quality. The sum in dispute is less than RM10,000, yet the appeal occupied two days, was supported by some 1,800 pages of records together with a written submission exceeding 300 pages filed by the appellant, and saw counsel for the appellant address the court for no less than five hours in total. Such intensity is unusual for a matter of this scale, though it is perhaps explained by the fact that the appellant is herself a solicitor of the firm on record and therefore unaffected by the usual concern of escalating legal costs.

[2] Litigants are entitled to pursue their claims regardless of quantum, but when the effort expended bears little proportion to the subject matter, the exercise risks drifting into what Dickens described in Bleak House as litigation for its own sake, where process overshadows substance. In this regard, I can only commend the learned Magistrate for the patience and composure she displayed in managing the trial.

Background Facts

[3] The respondent ("plaintiff"), Bank Kerjasama Rakyat Malaysia Berhad is a co-operative bank whose legal foundation is anchored in statute. It is deemed to be registered as a co-operative society under ss. 7 to 9 of the Co-operative Societies Act 1993, but its continuity and governance are specifically preserved by s. 3 of the Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978. In addition, the plaintiff is a prescribed institution under s. 3 and the First Schedule of the Development Financial Institutions Act 2002, and is therefore subject to the supervisory and prudential oversight of Bank Negara Malaysia.

[4] The appellant ("defendant"), Noor Farekh binti Mohamed Kassim, was issued a Bank Rakyat credit card-i facility with a credit limit of RM10,000, subject to the terms and conditions of the credit card-i agreement. She also maintained a debit card with the plaintiff.

[5] On 26 January 2015, the defendant registered the mobile number belonging to her friend and adopted sister, Siti Haslinda Jaapar ("SP3"), for both her credit card and debit card facilities, thereby granting SP3 full authority to use the cards.

[6] Subsequently, on 13 and 14 December 2021, three online transactions amounting to RM4,500 were made through the defendant's debit card for purchases on TikTok Hong Kong and TNG Digital Sdn Bhd. The defendant reported these transactions on 15 December 2021, alleging them to be unauthorised. Thereafter, between 22 and 27 December 2021, five further online transactions totalling RM7,000 were processed through the defendant's credit card, also for purchases on TikTok Hong Kong and TNG Digital Sdn Bhd.

[7] On 28 December 2021, the defendant contacted the plaintiff's service centre to dispute these credit card transactions. The plaintiff immediately implemented a temporary block and cancelled the card.

[8] The plaintiff's fraud, security, and compliance department conducted an investigation and, by letter dated 10 March 2022, informed the defendant that there was no evidence of unauthorised or fraudulent transactions. In fact, based on the plaintiff's investigation report, which was accepted by the

learned Magistrate, these transactions were initiated by Muhammad Ammar Al Harraz ("SP4"), the son of SP3, and the relevant Touch 'n Go account was registered in SP4's name.

[9] As of 8 May 2023, the outstanding balance stood at RM8,060.03. The plaintiff commenced legal proceedings to recover this amount. The defendant filed a counterclaim, alleging breach of contract and negligence in failing to prevent the eight disputed transactions (three on the debit card and five on the credit card) totalling RM11,500. She asserted that she had not received any SMS notifications or one-time passwords ("OTPs") for those transactions and sought general as well as exemplary damages.

[10] On 30 August 2024, the learned Magistrate entered judgment in favour of the plaintiff for the outstanding sum with the applicable ta'widh and costs of RM1,500, and dismissed the defendant's counterclaim with costs of RM1,500.

[11] The defendant appealed to this court on 13 September 2024. After hearing the matter, I dismissed the appeal on 13 June 2025, with costs of RM4,000. Dissatisfied with that decision, the defendant filed a notice of motion pursuant to s. 68(1)(a) of the Courts of Judicature Act 1964, seeking leave to appeal to the Court of Appeal.

Preliminary Objection

[12] The plaintiff raised a preliminary objection to the competency of this appeal, relying on s. 28(1) of the Courts of Judicature Act 1964. It was contended that the sum in dispute falls below the statutory threshold of RM10,000 and that the appeal is accordingly barred, there being, in the plaintiff's submission, no question of law for determination.

[13] The defendant resisted the objection and submitted that the appeal is not confined to factual disagreement but raises legal issues of substance. In particular, reference was made to the applicability of Bank Negara Malaysia's regulatory guidelines, the propriety of the Magistrate's reliance on contractual provisions not specifically pleaded, the existence and scope of the bank's duty of care, and whether procedural fairness was denied when the defendant was not permitted an adjournment to secure a subpoenaed witness.

[14] Having considered the submissions, I am unable to accept the plaintiff's objection. Section 28(1) draws a distinction between appeals which are limited to factual disputes in claims under RM10,000, and appeals which, though modest in quantum, involve questions of law that warrant appellate scrutiny. The issues identified by the defendant, whether ultimately meritorious or otherwise, are framed in terms of legal principle and not mere evidential disagreement. The appeal therefore falls within the statutory exception.

[15] To adopt the plaintiff's construction would be to elevate form over substance and to preclude appellate consideration of legal error simply because the monetary value is small, a result not consonant with the object and purpose of the provision. In the circumstances, I find that the appeal is competent notwithstanding the modest quantum involved, and the preliminary objection under s. 28(1) is dismissed.

Issues

[16] The defendant raised multiple grounds of appeal, which can be distilled into the following substantive issues:

(i) whether the disputed transactions were fraudulent or unauthorised;

(ii) whether the plaintiff breached its duty of care and/or specific terms of the credit card-i agreement;

(iii) whether the certificate of indebtedness and account statements constituted conclusive evidence of the debt;

(iv) whether the plaintiff complied with Bank Negara Malaysia's regulatory policies and guidelines;

(v) whether the learned Magistrate erred in procedural matters, including pleading issues and cross-examination rights; and

(vi) whether the Magistrate properly exercised discretion in managing trial proceedings and witness attendance.

Counsels' Contentions

Defendant's Arguments

[17] Learned counsel for the defendant, Wan Sharifah binti Wan Yusoff, mounted a vigorous defence of her client's position. Counsel maintained with utmost emphasis that the disputed transactions were fraudulent and executed without the defendant's authorisation, portraying the defendant as a blameless victim of a sophisticated scam that targeted the digital ecosystem of a third party.

[18] Counsel argued that the plaintiff, as a financial institution, failed catastrophically in its duty to exercise reasonable diligence and to uphold the requisite standard of care expected in the modern banking landscape, which extends beyond mere transaction processing to encompass a proactive obligation to safeguard customers from prevalent online financial fraud. This foundational failure was compounded, in counsel's view, by specific breaches of material clauses within the credit card-i agreement signed on 12 September 2008, namely cls. 6, 11(iii), and 20, which counsel contended obligated the bank to maintain secure systems and respond effectively to notifications of unauthorised use.

[19] A significant and recurring pillar of counsel's argument was a pointed procedural objection regarding the plaintiff's reliance at trial upon certain contractual clauses, specifically cls. 2, 11, and 18 of the credit card-i agreement, which she asserted were never explicitly pleaded in the statement of claim. She invoked O. 18 r. 7 of the Rules of Court 2012 ("the Rules"), characterising this as a fatal flaw that deprived the defendant of a fair opportunity to meet the case against her, thereby taking her by surprise and structuring the trial on an impermissible foundation.

[20] Furthermore, counsel anchored a substantial part of her appeal on the alleged non-adherence to the regulatory framework set by Bank Negara Malaysia, contending that the plaintiff violated specific provisions of the policy document on credit card-i (BNM/RH/PD 034-1), particularly cl. 16.5 on handling unauthorised transactions and cl. 25.2, prohibiting charges during an investigation, as well as the guidelines on complaints handling (BNM/RH/GL 000-4), which she argued demanded a more thorough and independent investigation than the internal exercise conducted.

[21] Perhaps the most vehement contention centred on an alleged violation of natural justice by the learned Magistrate. Counsel argued that the court's decision to proceed with the trial without granting a final adjournment for a subpoenaed witness from Celcom constituted a fundamental denial of the defendant's right to a fair hearing. She characterised this witness as crucial to challenging the plaintiff's evidence on the delivery of OTPs, and their absence was framed as a definitive blow to the defendant's ability to present her full defence, a right enshrined in O. 38 r. 14 of the Rules. This procedural issue, coupled with the reliance on unpleaded clauses, was presented not merely as legal missteps but as fundamental breaches that corrupted the fairness of the entire proceeding. In essence, learned counsel sought to persuade this court that the Magistrate's decision was predicated on a gross misapprehension of both the facts and the law, and that the defendant was entitled to have the judgment set aside.

Plaintiff's Arguments

[22] Learned counsel for the plaintiff, Arissa Azreen binti Ismawi presented a robust and clear rebuttal to the defendant's claims, anchoring her arguments firmly in the contractual documentation and the evidentiary record.

[23] Counsel asserted with clarity that the crux of this dispute originated not from any failure of the plaintiff's systems but from the defendant's own voluntary and deliberate actions in granting full access and mandate to SP3. By personally registering SP3's mobile number for OTP verification purposes for the debit as well as credit card facilities, the defendant

effectively appointed SP3 as her authorised agent and assumed all concomitant risks, thereby dismantling the very foundation of her claim that the transactions were unauthorised.

[24] In response to the allegation of fraud, counsel argued with force that the defendant had failed to discharge her burden of proof on a balance of probabilities, noting that her case rested on little more than bare assertion and unsubstantiated police reports, which stood in stark contrast to the plaintiff's comprehensive internal investigation conducted by its Fraud, Security, and Compliance Department. It is argued that such an investigation conclusively found no evidence of fraudulent activity; and that the defendant had failed to challenge with any independent or expert evidence.

[25] On the issue of contractual breach, counsel turned the defendant's argument on its head, contending that it was in fact the defendant who was in clear and material breach of the agreement's core terms, specifically cl. 2(iv) which expressly prohibits allowing third parties to use the card, and cl. 11(i) and (ii) which place the onus for internet transaction security squarely on the cardholder.

[26] Regarding the procedural objection concerning unpleaded clauses, counsel countered that these clauses were not new facts but rather the legal underpinnings of the plaintiff's pleaded case regarding the defendant's responsibilities and the consequences of her actions; their invocation at trial was both relevant and necessary to determine the central issues and did not prejudice the defendant or contravene O. 18 r. 7 of the Rules.

[27] Furthermore, counsel steadfastly maintained that the plaintiff had operated in full compliance with all relevant Bank Negara Malaysia guidelines, having conducted a prompt investigation and issued a definitive response within a reasonable timeframe, and correctly refrained from imposing charges during the investigation period as mandated, only pursuing the debt after its investigation had lawfully concluded the transactions were valid.

[28] In defence of the learned Magistrate's decision, counsel argued that the court's management of the trial process was a proper and justified exercise of its case management discretion. The failure to secure the Celcom witness, she contended, was a direct result of the defendant's own lack of diligence and successive failures to comply with timelines, not a denial of justice by the court. With the trial stretched over multiple dates and the defendant unable to guarantee the witness's attendance, the Magistrate was entirely correct in deciding to proceed based on the evidence before her, particularly as the proposed testimony, *ie*, to confirm the absence of records, was deemed peripheral and unnecessary for the fair determination of the core issues.

[29] Finally, counsel emphasised the conclusive nature of the certificate of indebtedness and the monthly statements, which pursuant to cl. 15(ii)(a) of the agreement constituted definitive proof of the debt in the absence of any demonstrable manifest error, which the defendant had again failed to show. In essence, learned counsel for the plaintiff positioned the defendant as the author of her own misfortune, arguing that the Magistrate's decision was a correct application of both law and fact to an unfortunate situation entirely of the defendant's own making.

Applicable Principles

[30] In determining whether to allow or dismiss an appeal against the decision of the lower court following a full trial, this court is guided by established principles of appellate review as well as the procedural framework set out in O. 55 of the Rules.

[31] The mechanisms set out in O. 55 rr. 2, 3 and 4 of the Rules provides that such appeals are to be by way of rehearing based on the records duly compiled from the lower courts. The rule underscores that the appellate process is not a retrial but a review of the lower court's decision based on the pleadings, the evidence recorded, and the grounds of judgment.

[32] It is settled law that the appellate court should exercise caution before disturbing the findings of fact by the trial judge, particularly when such findings involve the assessment of credibility of witnesses.

[33] In *Nor Azlina Abdul Aziz v. Expert Project Management Sdn Bhd* [2017] 5 CLJ 58; [2017] 3 MLJ 763, Harmindar Singh JCA (as His Lordship then was) provided a lucid exposition on the circumstances that justify appellate intervention, as articulated in the following passage from the judgment:

> [20] ... these occasions have been well set out in numerous cases. Some of these occasions are:
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> (a) where the *trial judge took into account irrelevant considerations and failed to give due weight to relevant considerations* (see *Director of Forestry, Sabah & Anor v. Mau Kam Tong & Ors And Another Appeal* [2010] 3 MLJ 509);
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> (b) where there was *no proper evaluation of the evidence* by the trial judge (see *Lee Nyan Hon & Brothers Sdn Bhd v. Metro Charm Sdn Bhd* [2009] 6 MLJ 1);
>
> (c) where the decision arrived at by the trial court was *without judicial appreciation of the evidence* (see *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2005] 2 MLJ 1);
>
> (d) where a trial court has so *fundamentally misdirected itself, that no reasonable court which had properly directed itself and asked the correct questions, would have arrived at the same conclusion* (see *Raja Lob Sharuddin Raja Ahmad Terzali & Ors v. Sri Seltra Sdn Bhd* [2008] 2 MLJ 87);

(e) where the trial judge was *plainly wrong in arriving at his decision* (see *Lee Ing Chin & Ors v. Gan Yook Chin & Anor* [2003] 2 MLJ 97);

(f) where a trial judge had so *manifestly failed to derive proper benefit from the undoubted advantage of seeing and hearing witnesses at the trial, and in reaching his conclusion, has not properly analysed the entirety of the evidence which was given before him* (see *First Count Sdn Bhd v. Wang Yew Logging & Plantation Sdn Bhd* [2013] 4 MLJ 693 which followed the Privy Council case of *Choo Kok Beng v. Choo Kok Hoe & Ors* [1984] 2 MLJ 165); and

(g) where the *judgment is based upon a wrong premise of fact or of law* (see *Perembun (M) Sdn Bhd v. Conlay Construction Sdn Bhd* [2012] 4 MLJ 149).

(emphasis added)

[34] In sum, in exercising its appellate function, this court is not tasked with supplanting the trial court's judgment simply because it may have arrived at a different conclusion. Rather, appellate interference is warranted only where the impugned decision falls beyond the acceptable boundaries of judicial assessment, whether by reason of a material misdirection, failure to consider relevant evidence, reliance on extraneous factors, or a clear error of law.

Findings Of The Court

Issue 1: Whether The Disputed Transactions Were Fraudulent Or Unauthorised

[35] Upon a thorough examination of the appeal record, I find no basis to disturb the learned Magistrate's finding on the core issue of alleged fraudulent transactions. The court concurs unequivocally that the defendant failed entirely to discharge the legal burden of proving, on a balance of probabilities, that the disputed transactions were either fraudulent or unauthorised.

[36] The evidence presented at trial was not merely suggestive but was conclusive in demonstrating that the defendant had taken a series of deliberate and conscious steps that led directly to the impugned transactions. By her own admission and action in expressly authorising SP3 to use the cards and, most critically, by formally registering SP3's mobile number for the purpose of transaction verification, the defendant effectively ceded control and created the very mechanism that facilitated the payments. This is in clear breach of the cl. 2(iv) of the credit card agreement which expressly prohibits allowing third parties to use the card, and cl. 11(i) and (ii) which place the onus for internet transaction security squarely on the cardholder. (See pp. 1159 and 1163 appeal records Part C Vol 2G (encl. 11)).

[37] The operational reality of modern banking, which the defendant voluntarily agreed to through the terms of the agreement, is that the successful delivery of an OTP to the registered number is the definitive authentication step. The plaintiff's evidence, which remained unchallenged on this point, irrefutably showed that the OTPs for every single disputed transaction were successfully delivered to the number belonging to SP3, the very individual the defendant had empowered.

[38] Furthermore, the plaintiff did not remain passive upon the defendant's complaint but initiated a comprehensive internal investigation conducted by its specialised Fraud, Security, and Compliance Department. This investigation, which involved analysing transaction logs, SMS delivery reports, and system records, constituted a reasonable and professional inquiry that yielded a definitive conclusion: there was no evidence of fraud or unauthorised activity on the part of the bank's systems or processes.

[39] The defendant's challenge to these findings was wholly unconvincing. She adduced no credible, independent, or expert evidence to contradict the plaintiff's conclusions. Her reliance on police reports and allegations of hacking into SP4's TikTok and Touch 'n Go accounts was speculative at best and amounted to a distraction rather than a genuine defence.

[40] Even if true, such events were entirely irrelevant and legally too remote to establish any liability on the plaintiff's part, as the scam's purported point of entry was the social media and e-wallet accounts of a third party (SP4), not the defendant's bank account or credit card facilities. The chain of causation was decisively broken by the defendant's own intervening act of granting access.

[41] Ultimately, the court finds that the true and proximate source of the problem was not any failure or negligence of the plaintiff but stemmed directly and exclusively from the defendant's own poor judgment and decision to grant access to third parties, in clear violation of her contractual obligations to maintain the security and exclusivity of her banking credentials.

Issue 2: Whether The Plaintiff Breached Its Duty Of Care And/Or Specific Terms Of The Credit Card-i Agreement

[42] On the issue of the alleged breach of agreement and duty of care, this court finds the learned Magistrate's reasoning to be sound. In particular, reliance on *Lee Cheong Chee v. HSBC Bank Malaysia Bhd* [2021] CLJU 439; [2021] 1 LNS 439 was apposite, where Wan Muhammad Amin Wan Yahya JC (as His Lordship then was) affirmed that the banker-customer relationship is contractual in nature, governed by the four corners of the agreement, and does not impose any fiduciary or heightened duty of care beyond its express terms (see pp. 8 to 10 of the supplementary appeal record in encl. 17).

[43] The evidence established that the defendant was in material breach of the credit card-i agreement. Clause 2(iv) explicitly prohibits a cardholder from allowing third parties to use the card. By registering SP3's mobile number for authentication and thereby granting her effective control of the facility, the defendant assumed the risks of that delegation. This was compounded by her breach of cl. 11(i) and (ii), which place the responsibility for safeguarding internet transactions squarely on the cardholder. Her decision to allow SP3 and, by extension, SP4 to access her details amounted to a direct violation of these core obligations.

[44] The defendant nevertheless sought to invoke the so-called *Quincecare* duty, first recognised in *Barclays Bank Plc v. Quincecare Ltd* [1992] 4 All ER 363, where a bank is required to refrain from executing payment instructions if on inquiry that the mandate may be a misappropriation. The Malaysian courts have considered this principle in *Alliance Bank Malaysia Bhd v. Khee San Food Industries Sdn Bhd & Anor* [2021] 8 CLJ 225; [2021] MLJU 1050, where Wan Muhammad Amin Wan Yahya JC (as His Lordship then was) acknowledged that such a duty may arise, whether in contract or tort, but emphasised that it is not open-ended. It arises only when the bank is placed on inquiry by suspicious circumstances, and its obligation is limited to making reasonable checks before acting.

[45] Those circumstances were plainly absent here. Since January 2015, the defendant had registered SP3's mobile number for both her credit and debit card facilities. The disputed transactions in December 2021 were duly authenticated by OTPs sent to that registered number. On the evidence, the plaintiff had no reason to question their validity, as the transactions bore every outward appearance of regularity. In such circumstances, the *Quincecare* duty is not engaged.

[46] The scope of the duty has also been the subject of comparative and academic discussion. In *Philipp v. Barclays Bank UK Plc* [2023] UKSC 25, the UK Supreme Court confined the duty to situations where the mandate itself is in doubt, such as where an agent acts dishonestly or where the customer lacks capacity. Where instructions are valid on their face, the court held that the bank's duty is to execute them, even if the customer has been deceived. This narrow approach has been criticised for failing to account for the realities of modern online fraud and leaving victims of authorised payment scams without recourse (see *Singapore Journal of Legal Studies*, March 2024, pp. 149 to 158).

[47] By contrast, the Singapore Court of Appeal in *Hsu Ann Mei Amy v. Oversea-Chinese Banking Corp Ltd* [2011] 2 SLR 178 accepted that a bank may refuse to act on even a customer's own instruction if there are reasonable grounds to doubt that it reflects the customer's true intention. The

commentary notes that this broader approach incentivises banks to adopt safeguards against scams without unduly impairing payment efficiency. Malaysia, however, has followed the narrower contractual approach. As noted in *Lee Cheong Chee* and *Khee San*, a *Quincecare*-type duty arises only if suspicious circumstances put the bank on inquiry.

[48] In the present case, the transactions were in substance push payments. The instructions were initiated and authorised using the defendant's own registered number, which was the agreed means of authentication. The plaintiff merely acted on those instructions, as it would with any online transfer or card-not-present transaction ("CNP transaction") authenticated by OTP. This stands in contrast to a pull payment, such as a cheque, where the instruction originates with the payee. By analogy, the defendant cannot rely on *Quincecare* when she herself had created the mandate that enabled the disputed transactions by registering SP3's number and thereby allowing SP4 to access the facility.

[49] Accordingly, I am of the considered view that the plaintiff was under no obligation in law to second-guess the transactions. On the contrary, it acted in accordance with the agreement by conducting a timely and thorough investigation consistent with its internal protocols and regulatory guidelines. The defendant's attempt to recast her own breaches as failures on the part of the plaintiff is unsupported by the evidence or the law. The proximate cause of the loss was her conscious decision to cede control of her banking credentials, which absolves the plaintiff of liability for the consequences that followed.

[50] For completeness, I note the comparative and academic debates on the scope of the *Quincecare* duty and the treatment of authorised payment fraud. While these perspectives are instructive, they do not displace the settled position in Malaysian law that the banker – customer relationship is rooted in contract and that any duty of care is circumscribed by the agreement and by the requirement of suspicious circumstances. On the facts before me, the Magistrate's findings were entirely consistent with this legal framework, and no basis has been shown for appellate intervention.

Issue 3: Whether The Certificate Of Indebtedness And Account Statements Constituted Conclusive Evidence Of The Debt

[51] On the issue of the evidential weight of the certificate of indebtedness and the accompanying account statements, this court affirms that the learned Magistrate's application of the law. The Magistrate correctly invoked and enforced cl. 15(ii)(a) of the credit card-i agreement which states as follows:

15. Pembayaran oleh Ahli Kad

...

ii. Pembayaran Harga Jualan

(a) Harga Jualan atau sebahagian daripadanya yang masih belum dibayar hendaklah dibayar oleh Ahli Kad menurut Penyata Kad yang dikeluarkan oleh Bank Rakyat pada Tarikh Matang Pembayaran atau sebarang jumlah lain yang dinyatakan dalam Penyata Kad. *Jumlah yang dinyatakan dalam Penyata Kad yang kena dibayar dan perlu dibayar oleh Ahli Kad kepada Bank Rakyat hendaklah, sekiranya tiada kesilapan ketara, menjadi bukti muktamad bahawa jumlah tersebut adalah kena dibayar dan perlu dibayar oleh Ahli Kad kepada Bank Rakyat*. Semua bayaran yang dibuat oleh Ahli Kad menurut setiap Penyata Kad hendaklah dianggap sebagai bayaran untuk menjelaskan Harga Jualan atau bahagian darinya yang belum dibayar di bawah Terma dan Syarat ini.

(emphasis added)

[52] This is a provision which the defendant had freely consented to, and which stipulates in clear and unambiguous terms that the amounts detailed in the monthly statements issued by the plaintiff shall, in the absence of any manifest error, be deemed conclusive and final proof of the debt owed by the cardholder. This contractual mechanism is not a mere formality but a cornerstone of commercial certainty, designed to provide a definitive record of transactions and liabilities between the parties.

[53] It is clear that the defendant's challenge to this certified amount was fundamentally hollow; her defence consisted of a blanket denial of liability based on the alleged unauthorised nature of the transactions, but she pointed to no specific arithmetic inaccuracy, duplicate charging, incorrect interest application, or unlawful fee within the statement's computation. She failed to produce any alternative calculations, independent forensic accounting evidence, or any material whatsoever to demonstrate that the sum of RM8,060.03 was incorrectly derived.

[54] This court underscores that established jurisprudence from superior courts has consistently and unequivocally affirmed the binding nature of such certificates of indebtedness. As per *Citibank NA v. Ooi Boon Leong & Or*s [1980] CLJU 168; [1980] 1 LNS 168; [1981] 1 MLJ 282 and *Cempaka Finance Bhd v. Ho Lai Ying & Anor* [2006] 3 CLJ 544, the legal principle is well-settled: where a contract explicitly provides that a certificate issued by one party shall be conclusive evidence of a debt in the absence of manifest error, the burden shifts decisively to the challenging party to prove that such an error exists.

[55] The threshold is not met by mere assertion, speculation, or a general denial of liability; it requires demonstrable proof of a clear and obvious mistake in the calculation itself. The defendant's failure to identify and prove any such manifest error is fatal to her case on this point. Her argument was an attempt to circumvent the specific contractual obligation to challenge the computation by instead challenging the underlying validity of the transactions, which is a separate issue which this court has already found against her.

[56] Consequently, the certificate of indebtedness and the detailed monthly statements stand unchallenged and therefore constitute irrefutable and conclusive evidence of the defendant's liability for the outstanding debt. The Magistrate was therefore entirely correct in law to treat them as such and to enter judgment for the certified sum.

Issue 4: Whether The Plaintiff Complied With Bank Negara Malaysia's Regulatory Policies And Guidelines

[57] On the issue concerning regulatory compliance, this court finds the defendant's contentions to be without merit and affirms that the plaintiff's conduct was in full alignment with the prescribed standards set by the central bank.

[58] The plaintiff demonstrably adhered to the core principles and specific procedural mandates set out in the relevant Bank Negara Malaysia guidelines throughout its handling of the defendant's complaint. Its investigation into the disputed transactions was initiated promptly upon notification and was conducted with due diligence by its specialised internal department, culminating in a reasoned conclusion communicated to the defendant within a timeframe that cannot be considered unreasonable. Even if there were some delays in the completion of the process, such delay is readily explicable given the need to verify records across different platforms and to liaise with third-party service providers. In any event, the Bank Negara guidelines are intended as regulatory standards to promote sound banking practice. They are not statutory provisions to be construed with the rigidity of binding law, nor should minor departures be converted into actionable breaches. To hold otherwise would be to elevate form over substance and to penalise a financial institution that in fact acted responsibly and within the spirit and purpose of the guidelines.

[59] Critically, the plaintiff scrupulously observed the prohibition against imposing financial burden during the investigative process, correctly refraining from levying any charges or fees related to the disputed amount while the matter was under review. This action directly conformed to the regulatory imperative to protect consumers from liability during a pending investigation.

[60] The plaintiff's overall course of action, *ie*, from the initial reporting mechanism to the final decision, was consistent not only with the letter of the guidelines but also with their overarching spirit, which aims to ensure a fair and structured process for complaint resolution.

[61] The defendant's attempt to impugn this process amounts to a disagreement with the outcome rather than an identification of any substantive procedural failing. The guidelines provide a framework for investigation; they do not guarantee a result favourable to the cardholder, especially where, as here, the investigation yields no evidence to support the customer's claim and instead reveals a clear breach of the customer's own contractual obligations. Therefore, the plaintiff's operations remained at all times within the bounds of its contractual and regulatory duties, and its ultimate decision to hold the defendant liable was a direct consequence of the evidence gathered, not a deviation from established protocol.

Issue 5: Whether The Learned Magistrate Erred In Procedural Matters, Including Pleading Issues And Cross-Examination Rights

[62] On the issue regarding procedural fairness, this court finds no infirmity in the learned Magistrate's conduct of the proceedings and holds that the defendant's rights were in no way compromised. The Magistrate correctly exercised her discretion in allowing reference to the specific contractual terms and the internal investigation report, as these documents were directly relevant to the central facts in issue; namely, the defendant's obligations under the agreement and the plaintiff's basis for rejecting her claim.

[63] The plaintiff's pleadings, while perhaps not citing every single clause by number, adequately set out the material facts regarding the defendant's voluntary registration of a third-party's phone number, the subsequent transactions, and the plaintiff's investigation. This provided sufficient notice to the defendant of the case she had to meet, fulfilling the fundamental objective of pleadings to prevent surprise and ensure a fair trial on the substantive merits.

Issue 6: Whether The Magistrate Properly Exercised Discretion In Managing Trial Proceedings And Witness Attendance

[64] I am of the considered view that the defendant's right to a fair hearing was not violated by the absence of the Celcom witness. The record reveals that the defendant was granted ample opportunity and had even obtained a court order for discovery, yet failed to procure the witness's attendance due to her own lack of diligence and last-minute requests for adjournments.

[65] Case management is an inherent power of the court, and the Magistrate's decision to proceed after numerous delays was a proper exercise of her discretion to prevent further protraction and to ensure the efficient administration of justice. The proposed testimony, *ie*, to confirm the absence of specific SMS records, was, in any event, of marginal relevance given the plaintiff's own conclusive evidence that the OTPs were successfully delivered to the registered number.

[66] The Magistrate's balancing of the right to present evidence against the need for timely justice was neither arbitrary nor unfair. Therefore, the proceedings were conducted in accordance with the principles of natural justice, and the defendant was afforded every reasonable opportunity to present her defence. In these circumstances, it cannot be said that the Magistrate's decision was plainly wrong within the meaning of *Lee Ing Chin & Ors v. Gan Yook Chin & Anor* [2003] 2 CLJ 19; [2003] 2 MLJ 97.

Decision

[67] For the reasons set out above, I have accordingly dismissed the defendant's appeal, with costs of RM4,000. The judgment of the learned Magistrate dated 30 August 2024 is affirmed.